

HOUSE BILL NO. 399

INTRODUCED BY J. MCKENNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIQUOR LICENSING LAWS; PROVIDING FOR THE DEPOSIT OF LIQUOR LICENSE FEES AND PERMIT FEES INTO THE DEPARTMENT OF REVENUE'S ~~INTERNAL SERVICE~~ LIQUOR ENTERPRISE FUND; CHANGING THE METHOD FOR DETERMINING WHEN THE DEPARTMENT OF REVENUE SHALL PUBLISH NOTICE OF APPLICATION FOR LIQUOR LICENSE TO WHEN THE APPLICATION IS COMPLETE RATHER THAN 30 DAYS AFTER AN INVESTIGATION IS REQUESTED; AMENDING SECTIONS 15-1-501, 16-2-108, ~~AND~~ 16-4-207, AND 16-4-401, MCA; ~~AND~~ PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);
- (d) electrical energy producer's license taxes under chapter 51;
- (e) ~~for an amount equal to 25% of~~ the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;
- (h) estate taxes under Title 72, chapter 16; and
- (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received

1 from the collection of license taxes ~~and fees~~ and all net revenue and receipts from all ~~other~~ sources, other
2 than certain fees, under the operation of the Montana Alcoholic Beverage Code.

3 (3) Notwithstanding any other provision of law, the distribution of tax revenue must be made
4 according to the provisions of the law governing allocation of the tax that were in effect for the period in
5 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed
6 by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally
7 accepted accounting principles.

8 (4) All refunds of taxes must be attributed to the funds in which the taxes are currently being
9 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and
10 penalties are currently being recorded."

11

12 **Section 2.** Section 16-2-108, MCA, is amended to read:

13 **"16-2-108. Disposition of money received.** (1) The department may purchase liquor from money
14 deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise
15 fund its administrative expenses ~~for the operation of liquor sales~~ ASSOCIATED WITH THE SALE OF LIQUOR,
16 subject to the limits imposed by legislative appropriation. An obligation created or incurred by the
17 department may not be a debt or claim against the state of Montana but must be payable by the
18 department solely from funds derived from the operation of state liquor sales. The department shall pay
19 into the state treasury to the credit of the enterprise fund the receipts from the sale of liquor and all taxes
20 ~~and license and permit fees~~ collected by it. Taxes, ~~license and permit fees~~, and the net proceeds from the
21 operation of state liquor sales must be transferred to the general fund.

22 (2) All liquor license fees and permit fees collected by the department must be deposited into the
23 department's internal service fund LIQUOR ENTERPRISE FUND. ~~The department shall pay its administrative~~
24 ~~expenses for liquor license administration and fee collection from the proceeds of the collection of liquor~~
25 ~~license fees and permit fees.~~

26 (3) THE DEPARTMENT SHALL PAY FROM ITS ACCOUNT IN THE LIQUOR ENTERPRISE FUND:

27 (A) EXPENSES ASSOCIATED WITH ADMINISTERING LIQUOR LICENSING AND FEE COLLECTION; AND

28 (B) EXPENSES ASSOCIATED WITH INVESTIGATIONS PURSUANT TO ITS AGREEMENT WITH THE DEPARTMENT OF
29 JUSTICE.

30 (4) THE NET PROCEEDS OF THE LIQUOR ENTERPRISE FUND MUST BE TRANSFERRED TO THE GENERAL FUND."

1

2 **Section 3.** Section 16-4-207, MCA, is amended to read:

3 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
4 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the
5 location of a retail license, the department shall review the application for completeness and, based upon
6 review of the application and any other information supplied to the department, determine whether the
7 applicant or the premises to be licensed meets criteria provided by law. The department may make one
8 request for additional information necessary to complete the application. The application is considered
9 complete when the applicant furnishes the application information requested by the department. If the
10 applicant does not provide the additional application information within ~~60~~ 30 days of the department's
11 request, the department shall terminate the application and return it to the applicant with an explanation
12 of why the application was terminated. The terminated application is not a denial, and the premises
13 identified in the application are not subject to the provisions of 16-4-413. An applicant whose application
14 is terminated may subsequently submit a new application. When the application is complete, the
15 department shall request that the department of justice investigate the application as provided in 16-4-402.
16 ~~If the department does not discover a basis to deny the application within 30 days after the department~~
17 ~~requests the investigation by the department of justice;~~ When the department determines that an
18 application for a license under this code is complete, the department shall publish in a newspaper of
19 general circulation in the city, town, or county from which the application comes a notice that the
20 applicant has made application for a retail on-premises license or a transfer of location and that protests
21 may be made against the approval of the application by a person who has extended credit to the transferor
22 or by residents of the county from which the application comes or adjoining Montana counties. Protests
23 may be mailed to a named administrator in the department of revenue within 10 days after the final notice
24 is published. Notice of application for a new license must be published once a week for 4 consecutive
25 weeks. Notice of application for transfer of ownership or location of a license must be published once a
26 week for 2 consecutive weeks. Notice may be substantially in the following form:

27

NOTICE OF APPLICATION FOR RETAIL

28

ALL-BEVERAGES LICENSE

29

30 Notice is given that on the day of, 20..., one (name of applicant) filed an application for a
retail all-beverages license with the Montana department of revenue to be used at (describe location of

premises where beverages are to be sold). A person who has extended credit to the transferor and residents of counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to, department of revenue, Helena, Montana, on or before the day of, 20...

Dated

Signed

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for

1 denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing
2 must be governed by the provisions of Title 2, chapter 4, part 6.

3 (c) The minimum number of protests necessary to initiate a public hearing to determine whether
4 an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203,
5 for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota
6 for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no
7 case less than two. The minimum number of protests determined in this manner will apply only to
8 applications for either on-premises consumption beer or all-beverages licenses."

9

10 **SECTION 4. SECTION 16-4-401, MCA, IS AMENDED TO READ:**

11 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code
12 is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

13 (2) Except as provided in subsection (6), in the case of a license that permits on-premises
14 consumption, the department shall find in every case in which it makes an order for the issuance of a new
15 license or for the approval of the transfer of a license that:

16 (a) in the case of an individual applicant:

17 (i) the applicant will not possess an ownership interest in more than one establishment licensed
18 under this chapter for all-beverages sales;

19 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
20 16-1-106;

21 (iii) the applicant or any member of the applicant's immediate family is without financing from or
22 any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

23 (iv) the applicant is a resident of the state and is qualified to vote in a state election;

24 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
25 business person and citizen demonstrate that the applicant is likely to operate the establishment in
26 compliance with all applicable laws of the state and local governments; and

27 (vi) the applicant is not under 19 years of age; and

28 (b) in the case of a corporate applicant:

29 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
30 (2)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each individual who has control over the operation of the license ~~or shares in the profits or liabilities of the license~~ meets the requirements for an individual applicant listed in subsection (2)(a);

(iv) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iv) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

~~(iv)~~(v) the corporation is authorized to do business in Montana; and

~~(v)~~(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

1 (vi) the applicant is not under 19 years of age; and

2 (b) in the case of a corporate applicant:

3 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
4 (3)(a)(iv);

5 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
6 listed in subsection (3)(a); and

7 (iii) the corporation is authorized to do business in Montana; and

8 (c) in the case of any other business entity as applicant:

9 (i) if the applicant consists of more than one individual, all must meet the requirements of
10 subsection (3)(a); and

11 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
12 subsection (3)(b).

13 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
14 beverage, the department shall find in every case in which it makes an order for the issuance of a new
15 license or for the approval of the transfer of a license that:

16 (a) in the case of an individual applicant:

17 (i) the applicant has no ownership interest in any establishment licensed under this chapter for
18 retail alcoholic beverages sales;

19 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
20 16-1-106;

21 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a
22 felony, rights have been restored;

23 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
24 business person and citizen demonstrate that the applicant is likely to operate the establishment in
25 compliance with all applicable laws of the state and local governments;

26 (v) the applicant is not under 19 years of age; and

27 (vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is
28 owned or controlled by a manufacturer of an alcoholic beverage; and

29 (b) in the case of a corporate applicant:

30 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection

1 (4)(a)(iii);

2 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
3 listed in subsection (4)(a);

4 (iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is
5 owned or controlled by a manufacturer of an alcoholic beverage; and

6 (iv) the corporation is authorized to do business in Montana; and

7 (c) in the case of any other business entity as applicant:

8 (i) if the applicant consists of more than one individual, all must meet the requirements of
9 subsection (4)(a); and

10 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
11 subsection (4)(b).

12 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
13 apply separately to each class of stock.

14 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant
15 to 16-4-302."

16

17 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

18

19 NEW SECTION. SECTION 6. APPLICABILITY. [SECTIONS 1 AND 2] APPLY TO FEES COLLECTED AFTER JUNE
20 30, 2001.

21

- END -